

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
DEPARTMENT OF EDUCATION,	)	File Nos. BPIF-20000818CJQ, BPIF-
ARCHDIOCESE OF NEW YORK	)	20000818CJV, BPIFB-20000818BXG,
	)	BPIFB-20000818BXH, BPIFB-
	)	20000818CEF, BPIFB-20000818CEK,
	)	BPIFB-20000818CES, BPIFB-
	)	20000818CEV, BPIFB-20000818CEY,
	)	BPIFB-20000818CFA, BPIFB-20000818CFI,
	)	BPIFB-20000818CFN, BPIFH-
	)	20000818AXZ, BPIFH-20000818AYB,
	)	BPIFH-20000818AYC, BPIFH-
	)	20000818AZG, BPIFH-20000818AZJ,
For Authority to Construct and Operate	)	BPIFH-20000818BZV, BPIFH-
Instructional Television Fixed Service	)	20000818CEM, BPIFH-20000818CEO,
Two-Way Facilities on	)	BPIFH-20000818COL, BPIFH-
Channels A1(KRS81), B1(KNZ69)	)	20000818CON, BPIFH-20000818CSE
New York, New York Area)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 2, 2003

Released: June 4, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. In this *Memorandum Opinion and Order*, we address the Department of Education Archdiocese of New York's (ADNY) above-captioned applications (FCC Form 331) to operate Instructional Television Fixed Service (ITFS) two-way stations on Channels A1 and B1 in New York, New York.¹ Additionally, we address twenty-three separate petitions to deny filed by the Roman Catholic Diocese of Rockville Centre (RCDRC) against ADNY's applications.² For the reasons stated below, we deny all but four of RCDRC's petitions to deny. We grant the remaining four petitions to deny for the reasons stated herein.

¹ Channel A1 is located at 2500-2506 MHz. Channel B1 is located at 2506-2512 MHz. See 47 C.F.R. § 74.902(a).

² Petitions to Deny filed by the Roman Catholic Diocese of Rockville Center (filed Apr. 2, 2001) (Petitions). ADNY filed a series of motions for extension of time to respond to the Petitions. On October 18, 2002, the Wireless Telecommunications Bureau set December 17, 2002 as the due date for ADNY's opposition. See Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS Pending Legal Matters, *Public Notice*, DA 02-2752 (rel. Oct. 18, 2002). ADNY filed separate oppositions to each of the petitions to deny on December 17, 2002. Oppositions to Petition to Deny (filed Dec. 17, 2002) (Oppositions). On December 27, 2002, RCDRC requested an extension of time until January 31, 2003 to file a reply. Motion for Extension of Time (filed Dec. 27, 2002). We find good cause for RCDRC's request for additional time to respond and grant its motion for extension of time. RCDRC filed a consolidated reply on January 31, 2003. Consolidated Reply (filed Jan. 31, 2003) (Reply). On March 17, 2003, ADNY filed a petition seeking leave to supplement its opposition, a supplement, and an amendment deleting one channel from its Oakland, New Jersey site.

2. *Background.* ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form.³ ITFS spectrum has been used to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users.⁴ In 1998, the Commission adopted technical rule changes to provide ITFS licensees flexibility to employ digital technology in delivering two-way communications services including high-speed and high-capacity data transmission and Internet service on a regular basis.⁵ A two-way system typically consists of high-powered transmitters, one or more hub stations⁶, which include transmitting and receiving antennas, and multiple return-path transmitters called response stations.

3. In preparing and filing two-way applications, applicants are required to follow a Commission-prescribed methodology for predicting interference from response station transmitters and to response station hubs.⁷ The methodology requires applicants to conduct four major steps in conducting a response station interference analysis.⁸ First, the applicant must establish a grid of points that is statistically representative of the distribution of transmitters expected within the response service area, and determine the elevation of each point.⁹ Second, the applicant must define any regions or classes of response stations.¹⁰ Third, the applicant must analyze the system configuration to determine whether it can eliminate any grid points from the analysis due to terrain blockage and to determine how to analyze the power radiating from the system.¹¹ Finally, the applicant must calculate the aggregate power from response station transmitters and use those values in its interference analysis.¹² The Commission requires

³ 47 C.F.R. § 74.931.

⁴ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket No. 03-66; RM-10586; WT Docket No. 03-67; MM Docket No. 97-217; WT Docket No. 02-68; RM-9718, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 03-56 (rel. Apr. 2, 2003) at ¶ 7.

⁵ See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order*, 13 FCC Rcd 19112 (1998).

⁶ A hub station is a fixed facility that can both emit signal transmissions, which are received by subscriber equipment, as well as receive transmissions from subscriber equipment. See 47 C.F.R. § 21.2.

⁷ See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, Appendix D ("Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems") 15 FCC Rcd 14566, 14510 (1998) (Appendix D).

⁸ *Id.* at 14611 ¶ 2.

⁹ *Id.* at 14611-15 ¶¶ 3-16.

¹⁰ *Id.* at 14615-17 ¶¶ 17-24.

¹¹ *Id.* at 14617-19 ¶¶ 25-31.

¹² *Id.* at 14619-21 ¶¶ 32-39.

the applicant to submit its analysis in a specified format and to provide copies of its analysis to all parties that are entitled to receive notice of the filing of its application.¹³

4. On June 30, 2000, the former Mass Media Bureau (Bureau) announced an initial filing window from August 14-18, 2000 for the filing of applications for two-way high-power signal booster stations, response station hubs and I channel¹⁴ transmission licenses.¹⁵ On August 18, 2000, ADNY filed the captioned applications. ADNY's applications appeared on public notice as tendered for filing on November 29, 2000.¹⁶ The Bureau accepted the applications for filing on February 1, 2001.¹⁷

5. On April 2, 2001, RCDRC, the licensee of ITFS Stations KNZ67 and KNZ68 in the New York, New York area, filed twenty-three separate petitions to deny against ADNY's applications. RCDRC operates on the A-Group channels on Long Island, New York from Station KNZ67 and on the B-Group channels at Central Islip, New York from Station KNZ68. Station KNZ67 was originally authorized to operate from a location in Syosset, New York.¹⁸ On April 30, 1998, the Commission granted RCDRC a construction permit to move its facilities to a site in Central Islip, New York.¹⁹ On April 9, 2001, RCDRC certified that it had completed construction of the Central Islip facilities on March 30, 2001.²⁰

6. *Discussion.* RCDRC alleges that ADNY's proposed facilities will cause harmful interference to Stations KNZ67 and KNZ68.²¹ However, ADNY asserts that RCDRC's engineering statement is defective because it is based upon Station KNZ67 operating from the Syosset site.²² ADNY also represents that with respect to Station KNZ68, RCDRC will not receive any more interference than it currently receives.²³ In its reply, RCDRC concedes that it relocated Station KNZ67.²⁴ RCDRC states that it does not oppose ADNY's proposal to the extent that it complies with the Commission's technical rules but that it continues to oppose ADNY's applications to the extent they violate the Commission's Rules.²⁵

7. Sections 74.939(d)(2)(iv) and (v) of the Commission's rules require the applicant to engineer its two-way systems to provide at least 45 dB of co-channel and 0 dB of adjacent channel interference

¹³ *Id.* at 14630-48 ¶¶ 74-111.

¹⁴ The I channels are channels in the 2686-2690 MHz band on which ITFS licensees may operate response stations. See 47 C.F.R. § 74.939(j)

¹⁵ Mass Media Bureau Provides Further Information on Application Filing Procedures and Announces Availability of Electronic Filing for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service, *Public Notice*, 15 FCC Rcd 11466 (MMB 2000).

¹⁶ Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Tendered for Filing, *Public Notice*, Report No. 148 (rel. Nov. 29, 2000).

¹⁷ Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Accepted for Filing, *Public Notice*, Report No. 164 (rel. Feb. 1, 2001).

¹⁸ Oppositions at 2.

¹⁹ File No. BLMPIF-19950330DE.

²⁰ File No. BMCIF-20010409AAJ (granted Aug. 10, 2001).

²¹ Petition, Engineering Statement of Stephen Daugherty.

²² Oppositions at 2. ADNY represents that the Central Islip site is 14.4 miles east-southeast (away from ADNY's proposed station) from the Syosset site. *Id.*

²³ Oppositions at 3.

²⁴ Reply at 1-2.

²⁵ *Id.* at 2.

protection, respectively, within the protected service area (PSA) of all other authorized or previously proposed stations.²⁶ We conclude that RCDRC's petition fails to demonstrate that ADNY's applications are defective. As RCDRC admits in its reply, its engineering statement assumes that Station KNZ67 is operating from a site at Syosset, New York, when RCDRC had relocated that station to the Central Islip site at the time it filed its Petition. Moreover, while the engineering statement provides maps showing predicted interference, it fails to provide information concerning how RCDRC's engineering consultant made his calculations or the data needed to evaluate the merits of the engineering statement.

8. In light of the issues raised by RCDRC, however, we conducted our own engineering analysis to determine whether the proposed operations described in ADNY's applications comply with the Commission's Rules. Our analysis considered both the individual and aggregate signal strengths that would occur in the PSAs currently licensed to Stations KNZ67 and KNZ68 at their Central Islip location. We took into account both terrain obstructions and the standard 4/3 earth curvature in performing our analysis. Based upon our engineering analysis and our review of the record in this proceeding, we conclude that four of ADNY's applications are defective and cannot be granted at this time. With respect to applications BPIFB-20000818CEK, BPIFB-20000818CEV, BPIFB-20000818CJQ and BPIFB-20000818CJV, our engineering analysis shows that they individually fail to provide 45 dB of co-channel protection to the PSAs of Stations KNZ67 and/or KNZ68.²⁷ The areas that will receive interference are located 15 to 35 miles away from the main transmit sites of Stations KNZ67 and KNZ68 while remaining mostly in the fourth quadrant (270 to 360 True North) of the PSAs of Stations KNZ67 and KNZ68. With respect to the remaining applications, our analysis shows that terrain blockage prevented any signals from entering into the PSAs of KNZ67 and KNZ68. Therefore, we find that the operations proposed in those applications will not cause interference to Stations KNZ67 and KNZ68. Accordingly, we will direct the Public Safety and Private Wireless Division's Licensing and Technical Analysis Branch to dismiss applications BPIFB-20000818CEK, BPIFB-20000818CEV, BPIFB-20000818CJQ and BPIFB-20000818CJV as defective pursuant to Sections 74.939(d)(2)(iv) and 74.939(d)(2)(v) of the Commission's Rules. We will further direct the Licensing and Technical Analysis Branch to process the remaining applications.

9. Finally, we deny ADNY's petition for leave to supplement its opposition and reject its amendment. For applications filed during the initial two-way filing window, any amendment that reflects any change in the technical specifications of the proposed facility will cause the application to be considered newly filed, except during the sixty day period after an application is placed on public notice as tendered for filing.²⁸ The Commission has a policy of returning such "suicide" amendments that would cause the dismissal of applications.²⁹ Accordingly, we will reject ADNY's amendment and deny its request for leave to supplement its opposition.³⁰

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 74.912 of the Commission's rules, 47 C.F.R. § 74.912, that the Petitions to Deny filed by the Roman Catholic Diocese of Rockville Centre on April 2, 2001 against the above-captioned applications ARE GRANTED with respect to applications

²⁶ 47 C.F.R. §§ 74.939(d)(2)(iv), (v).

²⁷ The facilities proposed in file Nos. BPIFB-20000818CEK and BPIFB-20000818CEV are predicted to cause interference to Stations KNZ67 and KNZ68. The facilities proposed in file No. BPIFB-20000818CJQ are predicted to cause interference to Station KNZ67. The facilities proposed in file No. BPIFB-20000818CJV are predicted to cause interference to Station KNZ68.

²⁸ 47 C.F.R. § 74.939(e).

²⁹ See *Tequesta Television, Inc., et al.*, MM Docket No. 85-60, *Memorandum Opinion and Order*, 2 FCC Rcd 41 (1987).

³⁰ In any event, we have reviewed ADNY's amendment and concluded that its proposed deletion of the channel at Oakland, New Jersey would not address any of the deficiencies we have identified in its applications.

BPIFB-20000818BXH, BPIFB-20000818CEV, BPIF-20000818CJQ and BPIF-20000818CJV and ARE DENIED with respect to the remaining applications.

11. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 74.912 and 74.939 of the Commission's rules, 47 C.F.R. §§ 74.912, 74.939, that the Licensing and Technical Analysis Branch SHALL DISMISS applications File Nos. BPIFB-20000818BXH, BPIFB-20000818CEV, BPIF-20000818CJQ and BPIF-20000818CJV filed by the Department of Education, Archdiocese of New York.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 74.912 and 74.939 of the Commission's rules, 47 C.F.R. §§ 74.912, 74.939, that the Licensing and Technical Analysis Branch SHALL PROCESS applications File Nos. BPIFB-20000818BXG, BPIFB-20000818CEF, BPIFB-20000818CEK, BPIFB-20000818CES, BPIFB-20000818CEY, BPIFB-20000818CFA, BPIFB-20000818CFI, BPIFB-20000818CFN, BPIFH-20000818AXZ, BPIFH-20000818AYB, BPIFH-20000818AYC, BPIFH-20000818AZG, BPIFH-20000818AZJ, BPIFH-20000818BZV, BPIFH-20000818CEM, BPIFH-20000818CEO, BPIFH-20000818COL, BPIFH-20000818CON, BPIFH-20000818CSE filed by the Department of Education, Archdiocese of New York.

13. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 74.939(e) of the Commission's rules, 47 C.F.R. § 74.939(e), that the amendment submitted by ADNY on March 17, 2003 IS REJECTED, and the "Petition for Leave to Supplement Opposition to Petition to Deny" filed by the Department of Education, Archdiocese of New York on March 17, 2003 IS DENIED.

14. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 1.46 of the Commission's rules, 47 C.F.R. § 1.46, that the Motion for Extension of Time filed on December 27, 2002 by the Roman Catholic Diocese of Rockville Center IS GRANTED.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau